

Use of Technology in Access to Justice

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Abstract

Access to justice is not only concerned with the way the judicial process functions but improving the way disputes are resolved. The process of availing justice showcases that it is time-consuming, unaffordable, unjustifiably combative and inexplicably steeped in opaque procedure and language. Promotion of access to justice includes factors² of dispute containment, dispute avoidance and legal health promotion. A legal issue must be first recognised and be dealt with by selecting the appropriate service. Justice must reach the non-lawyers who are unaware that there is a situation where a legal problem must be resolved, contained and avoided. Access to justice must spread to use of technology in courts and the way society is involved in the process of administration of justice. Services such as selecting the appropriate service for the legal issue is very important as this determines the efficacy of the judicial process. United Kingdom provides citizens advice service this enables the citizens to handle some of the legal situations on their own when legal services are provided online similarly like that of other online services of the State. These online legal services can be provided in three forms – web-based services, commercial or NGO's; subscription-based access or alternate business structures or legal publishers. The services which are provided can also be provided where citizens can compare the prices which will be available at competitive rates. Subsequently services can also be streamlined by providing guidance upon procedural and substantive issues. Along with services it is the need of the hour that judges start accepting e-filing, virtual courts, online dispute resolution, digital evidence, deposition of witness online for instance in Jammu and Kashmir where due to geographical limitations citizens might not be able to travel to reach the courts for testifying due to snow or landslides, whether it means they do not have access to justice? The paper critically analyses the role of the stakeholders in the administration of justice put together in providing access to justice to citizens through use of technology.

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²RICHARD SUSSKIND, TOMORROW'S LAWYERS – AN INTRODUCTION TO YOUR FUTURE 98 (Oxford University Press 2017).

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I. Introduction

E-access to justice is concerned with communication of lawyers through electronic means, when applications are filed online, hearing of cases, the documents are transferred among the lawyers and the government, legislative bodies, public offices and other jurisdictions through use of electronic messages. Accessibility of justice also requires translation into the local languages and made available to the public in a database through a website which will enable them to access the schedule of cases. The Government of India as started a project known as 'e-courts' which enables the district judiciary in India to be accessed by the public at large in terms of contact details, cause list, daily orders. Technology in promoting justice essentially requires internet services, tele-services, e-records or digital records, online decision making availability which not only connotes the availability of the same to individuals but also change the judicial process, professional practice, mode of making decisions and the concept of justice which the public has.

The purpose of use of technology in law is to ensure proper allocation of judicial resources, reduced costs of administration of justice, improved services for litigants, improved professional tools, secured decisions ensuring their enforcement and recognition. The civil society has a role too when the media is reporting on judicial accountability and trials, as underreporting or over reporting will both have detrimental impact upon interference in the working of the judiciary.

Delone and McLean recommended a model³ for e-justice which suggested that for the development of a model there needs to be freedom, accountability, fairness, access to all, transparency, privacy and lawful.

³KARIM BENYEKHFLEF, JANE BAILEY, JACQUELYN BURKELL, FABIEN GÉLINAS, EVALUATING E-JUSTICE: THE DESIGN OF AN ASSESSMENT FRAMEWORK FOR E-JUSTICE SYSTEMS(Jul. 27, 2020, 10:04 AM), <https://www.jstor.org/stable/j.ctt1wn0qx3.7>.

II. Access to Justice – Legal Right

Equal access to judicial systems is a fundamental right in democratic countries, India being one. This is recognized by the Council of Europe and the United Nations. The principle of equal access means one should not be prevented from access to justice based upon gender, sexual preference, location, socioeconomic condition, religion, right to representation or disabilities. Access to courts has been enshrined as a legal right in the European Convention on Human Rights, 1953⁴. The Universal Declaration of Human Rights, 1948 in Article 8 states “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”. E-justice systems also should implement the notion ‘equal access’ when there could be some users who have limited technological literacy who cannot be left as marginalized due to this difficulty. E-justice also is a tool for providing speedy justice which is again a fundamental right within the ambit of Article 21 of the Indian Constitution than the paper-based procedures which are also more costly. It is very much important for the development e-justice systems are assessed through method such as user survey, qualitative and quantitative analysis, participatory observation.

In today’s time the court system⁵ is creaking it is inefficient, slow, expensive and beyond people who do not belong to the legal fraternity but court system which has the primary responsibility of dispensing justice which cannot be left only for the legal community. Access to justice seems to be in great danger of being only accessible to the elite. If the advantages of technology which are being used in the other fields can also be used by the courts. The huge labour force, complex procedures, paper-based systems for running of courts can be streamlined, automatic and to an extent paper free will be less costly a system for justice delivery system. This efficient and well-equipped court room will enable the people to have more faith on the judicial process where there will be more satisfied lawyers. This makes it time for the government to invest in

⁴Article 6.

⁵SUSSKIND, *supra* note 1 at 106.

technology to support court and dispute resolution which is the today's solution for pendency.

E-filing⁶ when the parties attend the court proceedings will mean documents will be submitted through electronic form which shall also be helpful for the judges and other stakeholders of the judicial process in access to the documents than huge bundles of paper when the papers can be hyper-linked to each other which are to be read as references or annexures in manual submissions. In usual court rooms stenographers take dictation and then place the copy of the pronouncement before the judge for the final judgement, but use of computer-assisted transcription⁷ (CAT) which will help to collect words which are spoken in court room noted by stenographers and it is changed into text which appears instantly on the screens of the judges and other participants in the judicial process which is enabled with search engine as we cannot expect the judges to sit in court rooms with laptops and taking notes.

Document display system is another enabling tool during the trial which ensures that all are on the same page and are not waiting for the litigants and jury to find papers and files manually. The courts attention can also be motivated when it is requested to look at the screens. This can also help in reducing the time consumed during a hearing and bring in efficiency in judicial process.

Placing of evidence is another integral part of the judicial process which also needs to be beyond all reasonable doubts. Oral arguments are important but the same time lawyers can also rely or place evidence in form of charts, graphs, diagrams, animations, drawings, models, animations which can be displayed in the monitors in the court rooms in both civil and criminal cases. For instance, the delay in a project can be represented by an animation that compares the actual and the projected time taken for its completion or difficulty in movement of funds in a graph than stating orally. The UK Supreme Court⁸ is now in its second generation of system which uses e-filing, document display, real time transcription, judicial use of computers on the bench and remote evidence.

⁶*Id.* at 107.

⁷*Id.* at 108.

⁸*Id.*

III.I Needof Technology in Justice Dispensation

According to the report of Supreme Court of India titled ‘Subordinate Judiciary – Access to Justice’⁹ lack of capacity is one of the reasons of high level of pendency. The reason of pendency starts from subordinate courts where the courts work in severe shortage of courtrooms, secretarial and support staff, lack of office space and residential accommodation of judges. The report informed that the subordinary judiciary is working¹⁰ with 5018 a smaller number of court rooms to the existing 15540 rooms with a strength of 20558 judicial officers as on 31.12.2015. About staffs¹¹ 41775 are lying vacant as on 31.12.2015. In high courts also there is a sanctioned post of 1018 to which the working strength is 598. The appointment of high court judges has been a long fight with that of the state bar councils and the central government which is the nodal agency to accept recommendations for appointment of judges. The Calcutta high court, Orissa high court witnessed cease work for close to three months regarding protests of appointment of judges. The absence of clear time frame to dispose of a case seems to be a concern among various high courts, also in the same high court in similar types of cases. The Daksh Report¹² published in 2016 states that the Bombay high court for instance takes an average of 77 days to hear civil revisions while 2303 days to hear civil appeals. In regard to the delays caused during hearing of the appeals and writ petitions which has usually less procedural requirements there can be adoption of a time frame for disposal of the case between the parties with the sanction of the court which can also impose costs if such timelines are not adhered to.

⁹SUBORDINATE COURTS OF INDIA: A REPORT ON ACCESS TO JUSTICE (2016)(Aug. 08, 2020, 8:05 PM), <https://main.sci.gov.in/pdf/AccessToJustice/Subordinate%20Court%20of%20India.pdf>.

¹⁰*Id.*

¹¹*Id.*

¹²DUSHYANT MAHADIK, ANALYSIS OF CAUSES FOR PENDENCY IN HIGH COURTS AND SUBORDINATE COURTS IN MAHARASHTRA (Jul. 27, 2020, 1:43 PM), <https://doj.gov.in/sites/default/files/ASCI%20Final%20Report%20Page%20641%20to%20822.pdf>.

II.II Data collected from person in-charge of National Judicial Data Grid Project (NJDG) Project at Jalpaiguri District of West Bengal through Interview¹³

- a) E-filing not in function
- b) Video conferencing takes place in dedicated video conferencing rooms that is the judges has to come to the video conferencing room leaving the regular court
- c) Video conferencing not functional in court rooms
- d) Video Conferencing not possible when witnesses are located near
- e) Production of accused persons not yet practised through Video conferencing from correctional homes
- f) Information to litigants through sms& email since 2015, however information to victims had no information.

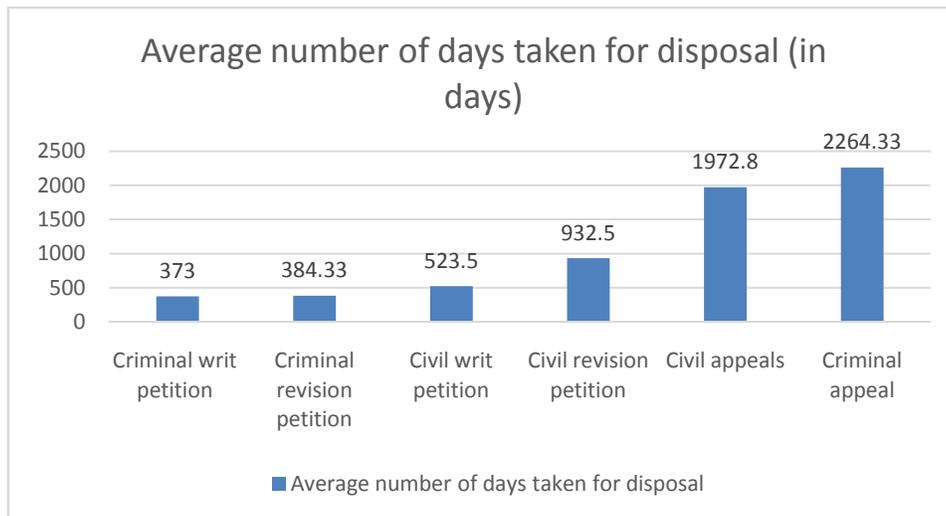


Figure 1: Average number of days taken for disposal¹⁴

¹³Data collected from District Court of Jalpaiguri, West Bengal, India in 18th November, 2019 while conducting empirical research permitted by Calcutta High Court for Ph.D research.

¹⁴DUSHYANT MAHADIK, *supra* note 11.

This also directly impacts under trials who do not get the opportunity to reach the doors of justice and await themselves to be heard, they are neither acquitted nor convicted but have to wait for their chance to be heard due to the blocked gates of justice delivery system. Section 436A¹⁵ deals with right of under trials. The law of Section 436A states that when a person has undergone detention when investigation was been carried on or during inquiry or during trial for an offence not being punishable with death has undergone detention one-half of the maximum punishment for the offence he has been booked. It is a right for the under trial to be released on personal bond with or without sureties. The court is also at liberty to keep the person long than the statutory limit after hearing of the public prosecutor after recording reasons though the period cannot extend for the total punishment prescribed by the law.

This also means there is clear violation of statutory right due to the pendency of cases. The data cited below refers to NCRB data of crime in India which is again silent upon how much time these under trials are in prisons, some can be one third which is the statutory right, some can be more than that and some can be due to filing of frivolous cases arising out of personal enmity or political enmity. In civil matters huge economic losses which is occurred in recovery of money.

¹⁵CODE CRIM. PROC.(1973).

II.III Status of Under Trials:

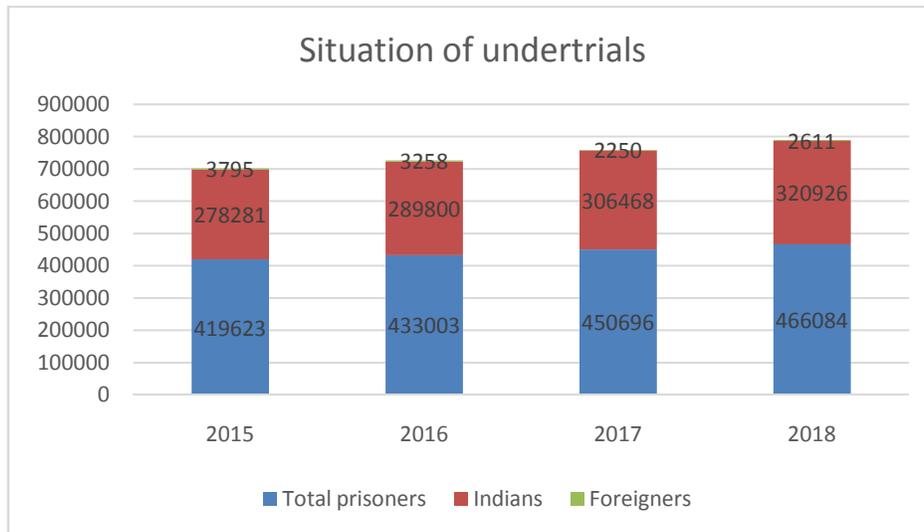


Figure 2: Situation of Under-trials

It can be noted from the above graph that there is increase of Indian under trial prisoners to 13380 between 2015-16¹⁶, 17693 between 2016-17¹⁷, 15388 between 2017¹⁸-18¹⁹. However, in May 2020 after supreme took suo-moto²⁰ petition (Civil) No. 1 of 2020 – in re: Contagion of covid -19 to achieve the target “social distancing norms in prison” cognizance about the space crunch and the occupancy²¹ rate of prisons which stood at 117.8% in 2018 it started a high powered committee²² which worked in coordination with the State High Courts and Legal service authorities and released 42772 undertrials, parole to 16391 convicts, 9558 in remand stage were released on 15.05.2020.

II.IV Assessment of Dum Dum Correctional Home

¹⁶NCRB, PRISON STATISTICS INDIA (2015).

¹⁷NCRB, PRISON STATISTICS INDIA (2016).

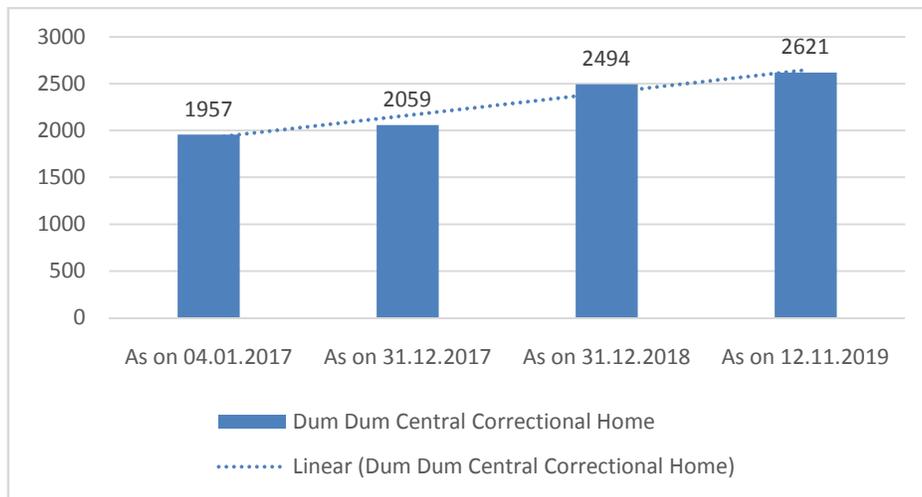
¹⁸ NCRB, PRISON STATISTICS INDIA (2017).

¹⁹NCRB, PRISON STATISTICS INDIA (2018).

²⁰ACTIVITIES OF NALSA DURING PANDEMIC(Jul. 27, 2020, 2:05 PM), https://www.livelaw.in/pdf_upload/pdf_upload-374881.pdf.

²¹TATA TRUSTS, INDIA JUSTICE REPORT (2019).

²²Set up in 23.03.2020.



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Figure 3: Situation of undertrials at Dum Dum Central Correctional Home

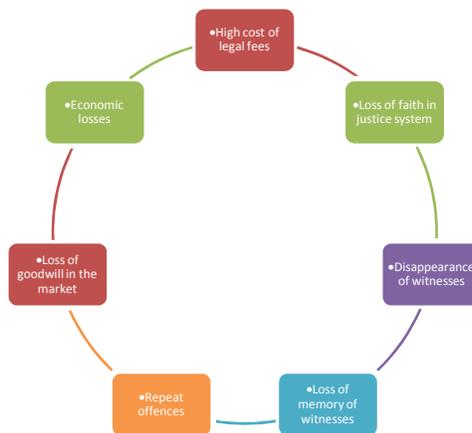


Figure 4: Impact of pendency of cases

This shows us it is not only delay in justice but rights of socio-economic, political and cultural altogether gets affected in a society due to pendency of criminal and civil matters.

²³Data collected Vide permission letter no. 996/M-1(2)/2014 dated 23.10.2019 from OSD & Ex-officio DG & IG of Correctional Services, West Bengal on 15.11.2019.

II.V E-Access to Justice and Correctional Services

Considering the number of under trials in India it is the need of the hour to complete the trial preferably within reasonable time, in several occasions the courts have rejected bail application but have passed an order stating that the trial maybe likely completed within one year. Completion of trial and the presence of accused persons is interconnected, the presence requires ample amount of resources of the state to be dispensed with. For instance, for production of the accused from the correctional home to the court requires various formalities including security arrangements, health of the accused, vehicle and policemen to ensure the process is completed smoothly. The Calcutta High Court in the case of *Najir Momin @ Nazir Momin vs. State of West Bengal*²⁴ referred that the position of West Bengal is concerned the linkage of video linking is only found in nineteen District Courts are connected to eighteen correctional homes. The court clarified that the reality is the number of under trials who are produced more is before the court of Chief Judicial Magistrate or Additional Chief Judicial Magistrate. Availability of video linkage provides a speedy way for production of under trials. The present availability of video conferencing room does not make the resource available to the courts of CJM/ACJM who has to hear the cases of remand of accused persons. This is a welcome step for promoting e-access to justice.

However, the following needs to consider for effective implementation of the guidelines:

- a) Presence of a doctor or a doctor's report can also be sent through email or a dedicated application when the under trial is produced.
- b) The service of extending the same must also be extended to police stations from where accused can be produced from police remand, similarly the medical report will be essential which must indicate the date, time and place of the check-up before the accused is produced through video conferencing.

²⁴C.R.M. no. 9557 of 2019, Calcutta High Court.

- c) The use of video conferencing or linkage must also be extended to parole board decisions; access to legal counselling or medical services where minor suggestions are required.
- d) Video conferencing²⁵ can also help in curbing small disputes when family and friends²⁶ of inmates comes to visit them in the correctional home which requires the authorities to ensure it is through a glass room or iron blocks along with secure check of the visitors and finally the safe movement of the inmate back towards his cell. In reference to the over crowding of jails (the present population is 466084 against the sanctioned strength of 396223 as on 31.12.2018²⁷) the visitor foot fall will also increase if video conferencing through the use of skype, whatsapp call, face time is used this will also bring down the number of visitors and ensure smooth communication with their families. It can be noted that Rule 58(1)(a)²⁸ states that “*Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals: by corresponding in writing and using, where available, telecommunication, electronic, digital and other means...*” which mandates countries and state legislatures to formulate policies for using technology in access to justice for inmates.
- e) This is also cost saving; the exchequer of the state is limited which also needs attention. Using technology will ensure cost reduction regarding infrastructure arrangements of production of accused, availing legal counselling, doctor consultation, parole meetings. Idaho²⁹ compared the costs of purchasing of computer, internet service, software’s and other

²⁵JAMES M. JEFFORDS CENTER’S VERMONT LEGISLATIVE RESEARCH SERVICE, PRISON VIDEO CONFERENCING(Apr. 04, 2020, 7:14 PM),<https://www.uvm.edu/~vlrs/CriminalJusticeandCorrections/prison%20video%20conferencing.pdf>.

²⁶*Ibid*, Adopted by Missouri.

²⁷WORLD PRISON BRIEF DATA(Apr. 04, 2020, 12:30 PM),<https://www.prisonstudies.org/country/india>.

²⁸UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY(2015).

²⁹*Id.*

essentials was low when compared to arrangement of infrastructural arrangements.

II.VI Other coherent problems of legal systems in promoting e-access to justice

- a) Underperformance due to lack of proper design of systems
- b) Lack of strategies for development
- c) Malfunctions of systems
- d) Lack of maintenance
- e) Lack of awareness
- f) Lack of training of professionals
- g) Lack of updating of practices
- h) Perception and acceptance by people

II.VII The following needs to be kept in mind during use of E-Access to Justice

- a) E-access³⁰ to justice will promote to remove the biasness or prejudiced nature of judges when cases are distributed, the system shall allocate cases.
- b) Databases will have routine cases supported by sentencing operations, these may affect the judges because it will force them to choose the decision from the stored selected guidelines only. This may also lead to bind them curbing the independence of judiciary.
- c) The next issue which needs to be addressed is delegation of functions, activities including software designs to private companies as outsourced work for implementation and spread of technology. This also gives rise to dependency upon the private suppliers.
- d) Use of technology in delivering justice must focus on two main aspects, systems capacity to uplift judicial and court's accountability. This can

³⁰SUSSKIND, *supra* note 1 at 8.

be achieved through by adapting a formal process in form of publication of annual court report, scrutiny of judicial appointments and appealable.

- e) *Firstly*, use of technology also requires as assessment of the of the e-justice system and the way it is working which can be checked by seeing whether the present system has the capacity to increase efficiency of the judicial work and the court along with providing information on the same. *Secondly*, the accountability level of the e-justice system itself. E-justice provides information on courts and judicial efficiency and whether the nature of the judicial work is in order of after complying of the norms. The system can also be used in monitoring and storing information on cases filed and the average time which is taken to process a case through developing system such as case management system, electronic legal work desk, court records and electronic data.

III. Law and Technology

The purpose of law is that of an instrument of regulation to control the activities of the government and as a tool to control the powers of the State to put forward the legitimate expectations of the citizens. In respect of technology it performs an independent role to achieve specific ends which is beyond human control and as an instrument that involves the results it achieves. E-filing of applications requires association of a varied types of technological applications required by litigants and courts also need to exchange the prescribed documents. E-filing helps the judicial procedures to structure itself by securing a judicial identity and how documents can be exchanged in this behalf. Justice systems must be associated to accommodate large scale stakeholders of the justice delivery system such as courts, police public prosecutors and prison department. Videoconferencing can be a tool of information technology to hold court proceedings which enables the court to conduct appearances of witnesses from a remote location also the security issues concerning production of the inmates is also taken care of. Use of technology includes information through web pages, online document assessment, electronic filing, interactive interviews and opinions, live video telecast systems, security system for the courts, broadcast of

court proceedings have transformed the traditional court practices enabling the users of the court system to connect better to each other.

Washington State Access to Justice³¹ an organization created by order of Washington State Supreme Court in 1994 to start Access to Justice Technology Bill of Rights (ATJTBoR) committee which included judges, clerks and all other staffs associated with the courts to assess the actual and planned deployment of technologies in the administration of justice by the state. There was another group working comprising people from the field of technology, law, and academics to prepare an ideal system. This was followed by a sub-committee which held extensive to understand the impact of the use of technology on the various corners of the criminal justice administrators.

The success of use of technology requires to adopt best practices through use of templates, materials which will act as resources which would be made available to the court officers which would help in day-to-day planning and development of the use of technology. Use of technology may also lead to certain anxieties amongst the members of the justice delivery system such as:

- a) **Loss of administrative flexibility** - Use of new technology means there would remain a fear of administrative responsibilities with that of the present ones. The principles which would govern the use of technology would also require that the agency must not violate the third-party legal rights of third party.
- b) **Cost and unfunded mandates** – Adoption of technology must also ensure that it is cost effective and it does not lead to misutilization of the available funds because availability will result in costly services at least in short term tenures which at times acts as an barrier to adopt it.
- c) **Impossible tasks** – Improving the quality of justice through use of technology at times also demands the fear of expensive availability of public-access network which also needs to be addressed.

³¹RICHARD ZORZA AND DONALD J HOROWITZ, THE WASHINGTON STATE ACCESS TO JUSTICE TECHNOLOGY PRINCIPLES: A PERSPECTIVE FOR JUSTICE SYSTEM PROFESSIONALS (Jul. 25, 2020, 7:10 PM), <https://www.jstor.org/stable/27977301>

- d) **just outcomes versus process orientation** – Often policies are designed with a mind set of result oriented which means the legal systems are not designed focusing on the processes which are covered to reach the objective of the policy designed, this would affect the working of the legal systems as the results would differ if the processes is not taken care of.
- e) **Generality vs. specific** – There has to be a balance between the general and specific principles which needs to be insisted upon to govern the rules of use of technology, in addition there has to be adoption of ‘best practices’ which will ensure to deal with specific situations.

IV . Legal Information Systems

Legal information³² system gives rise to a limited number of regulatory questions like that of the privacy issues of the names of the persons mentioned in the judgment which needs to be balanced with purpose of publicity of judicial decisions. Though LIS helps in making the laws and cases digitally available which can affect the way it is interpreted as the intentions of the judiciary can also be interfered with the voice of the civil society and media. At present times the use of SCC online, manupatrawhich provides headnotes for the judicial decisions as per the running of that software running office bearers, another problem is that sometimes the headnotes may carry a completely different message than the opinion of the judiciary due to the biased legal interpretations.

Transparency of information is what kind of information does the e-justice system provides referring to the procedural norms which regulates the systems, availability of documents that provide the information. The next thing about information is the quality of information whether the information which is provided is complete? Whether the information provided can be relied upon? – Presence of FAQ’s; whether the information which is asked is provided on time? – how often the information is updated in the e-justice systems; whether the information is accessible? Comprehensibility of information, number of help desks are answers to accessibility.

³²SUSSKIND, *supra* note1 at 96.

Service quality is another requirement of effective e-justice systems, one needs to access whether the service is reliable? – Timely service or on demand; whether competent personnel are engaged for delivery of the service and what quality of service are provided by the providers vis a vis the users – the nature of the staffs engaged and their availability and general rate of service provided which has online support.

V. Virtual Courts

Increasing access to justice in today's judicial³³ process is a much-needed thing which also must be able to look ahead in the future to improve the future of courts and dispute resolution. This brings to the question that whether courts are service or places where the parties must mandatorily assemble to reach to justice. Is the physical place important in terms of access to justice? When we term 'virtual courts'³⁴ it gives us an image of a conventional set-up of the court room in which a video-link attached. History has shown that in serious criminal cases and cases where witnesses have been intimidated have deposed through use of video conferences in important discussions pertaining to bail or remand. Expert opinion³⁵ which is another support system for courts can be more efficient when experts such as doctors, fingerprint expert and others who due to paucity of time or other pre-engagements can depose from remote locations through use of video conferences in large screen of court rooms. Not only the witnesses, the accused person can also appear in sensitive cases which not only saves time but also money and vulnerability.

The Ministry of Justice published a report titled 'Virtual Court Pilot: Outcome Evaluation' in 2010 which showcased that how a video link which could connect police station and the court room can be useful to have the first hearing

³³*Id.* at 110.

³⁴SALIH PIRZADA, JUSTICE GITA MITTAL HOLDS COURT HEARING VIA VIDEO CONFERENCING DESPITE MEDICAL DIFFICULTIES (AUG. 10, 2020, 7:10 PM), <https://www.livelaw.in/top-stories/justice-gita-mittal-holds-court-hearing-via-video-conferencing-despite-medical-difficulties-145460#:~:text=Chief%20Justice%20of%20J%26K%20High,May%202019%2C%20despite%20medical%20difficulties.&text=However%2C%20she%20has%20been%20holding,%22>

³⁵Indian Evidence Act, 1872, Section 45-51.

in most of the criminal cases. It also cuts down on the failure of appearances saving the pressure of transportation of prisoners from court to court.

In the present time of skype, video calls has broadened the scope of virtual courts though it can be difficult to use during trials but definitely can be beneficial in pre-trial stage when judges from there chambers can hear the parties appearing from remote locations. This also established the fact that there cannot be any boundaries in availing justice, for instance in Jammu and Kashmir due to snowfall witnesses or accused persons may face difficulty in appearing for court hearings and also seek a date when the climate is favourable which is again limiting the concept of access to justice altogether where technology can be immensely beneficial.

V.I View of Judiciary

*Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav*³⁶,– video conferencing was used for the purpose of fair trial the accused's personal appearance was dispensed with person and the proceeding was conducted from Tihar Jail in Delhi. The learned trial judge also ensured before recording of statements that the accused was available over video conferencing to ensure the statements recorded under section 313 are not a mere formality. in a different city when accused kept in a different city.

In the case of *State of Maharastra Vs Praful B Desai*³⁷ – permitted witness examination through video conferencing. The question of witness examination over video conferencing was compared to that of virtual reality which infringed the rights of the accused under Article 21 of the Constitution. It was deliberated upon that in a situation of virtual reality is a situation where one is made to feel, hear or imagine something which does not exist in real. For instance, can be made to feel that the person is in a cold room though being present in a humid condition. Video conferencing cannot be linked with that of virtual reality, science and technology has brought the world closer where we can watch a match which is happening live in another part of the world. A person who witnesses the match in the stadium gets to see the same reality of the match

³⁶ (2005)Cri.L.J. 1441 (India).

³⁷(2003) 4 S.C.C. 601 (India).

similarly to that of the person watching the match at home which is not virtual reality but reality. Video conferencing helps to connect to a person who is distant from the place to enable him to see, hear and talk without touching in a similar manner as if the person is appearing physically before you. The presence of the accused or his pleader during the recording of evidence through video conference satisfies the condition of 'presence' withing the meaning of section 273 of Cr.P.C. In fact, the accused will be able to see the witnesses much better than in an overcrowded court room. The playback option of the video would also enable a better situation during cross-examination. Witnesses can be confronted regarding documents, other material or statement as if it is taking place in the court without causing any prejudices to the accused.

In the case of *Sujoy Mitra Vs. State of West Bengal*³⁸—The Calcutta High Court permitted witness examination through video conferencing situated in Ireland. In the present case all other witnesses were recorded however the victim of the crime was an Irish lady and presently in Ireland where the trial court had allowed recording of statement of the witness over video conferencing. The court also rejected the view that extradition treaty is not required between countries for recording of witness statements. Further that there is any need to file affidavit for deposition disclosing the identity and the victim was not looking directly at the camera. However, the court gave a few guidelines during video conferencing:

- a) The court must ensure that the identity of the witness who is giving evidence via video conferencing is satisfied
- b) Administering of oath before recording of evidence
- c) Examination of witness must be done during the working hours of the court
- d) The copies of the documents which is to be required for extraction of proof must be sent in advance to the witness
- e) The court must also ensure the witness is alone in the room in the Indian embassy through video conferencing

³⁸(2015) 16 S.C.C. 615 (India).

- f) The court must also record the demeanour of the witness is essential for evaluation of the evidence
- g) Once the recording is started it must be completed daily without adjournments
- h) Any other requirements essential for proper recording as deemed fit by the trial court

Access to justice and participation of stakeholders of the trial is of utmost importance this gives us an understand that technology in Indian law is not new, the fair trial rights of public hearing can be substituted by online hearing. It can be suggested:

- a) Recording of hearing is kept.
- b) Live steaming of hearing is ensured in court's website with audio and video.

VI. Conclusion and Suggestions

The present situation of lock down due to the spread of virus, covid-19 has made the judiciary think about e-courts or virtual courts. Matters are been taken which are of most urgent in nature there after listed in the respective website of the High Courts and Supreme Court.

VI.I The Supreme court of India and e-filing:

The court has rolled³⁹ out services during the covid-19 spread in India which should us the usage of technology at length for the first time in the Indian judiciary. The services of e-filing are available to advocate-on-record and petitioners in person. The AOR's are required to register their email id and phone number along with a copy of their signature sent online in this link after duly filling in the form.

It can be suggested that the lower judiciary that is courts of the magistrates to the court of district judge is also brought in under the purview of e-filing. At the

³⁹PRACTICE DIRECTIONS FOR E-FILING (PHASE-II) IN THE SUPREME COURT OF INDIA(May. 15, 2020, 3:10 PM), https://main.sci.gov.in/php/FAQ/5_6246991526434439183.pdf.

present situation can be further extended to high courts to enable them to sit regularly besides emergency benches. Apart from the present Indian judiciary is already in use of software's such as 'dragon' which work as speech to text. But often it is learnt from the judicial officers that adequate support personnel who are attached to them are not trained in handling these software's which may be a reason for non-usage of this technology due the huge pressure of cases upon them. Inclusion of cause lists in e-courts which is now a reality which is again a reality through the ecourts.gov.in website an initiative of Department of Justice, Government of India is another initiative of usage of technology. Server copies of orders in lower judiciary which is also now a reality, this not only promotes using technology in access to justice but litigants would not have to rely upon the words of the advocates for information rather they can be personally obtain the information.

VII.1 The other suggestions recommended are as follows:

- a) Use of display boards in district judiciary
- b) Strengthening e-filing where documents will be submitted through electronic form which shall also be helpful for the judges and other stakeholders of the judicial process in access to the documents than huge bundles of paper when the papers can be hyper-linked to each other which are to be read as references or annexures in manual submissions
- c) Use of computer-assisted transcription (CAT) which will help to collect words which are spoken in court room to be captured by stenographers and it is converted into text which appears instantly on the screens of the judges and other participants.
- d) Document display system is another enabling tool during the trial which ensures that all are on the same page and are not waiting for the parties and judges to locate papers and files manually.
- e) Oral arguments are important but the same time lawyers can also rely or place evidence in form of charts, graphs, diagrams, animations, drawings, models, animations which can be displayed in the monitors in the court rooms in both civil and criminal cases. This would be

beneficial in understanding the duration of time, movement of funds and projected completion.

- f) Court visits which is real time to ensure the use of technology at all levels in the district judiciary court visits and which are carried on for documentation purposes.
- g) Deposition of witnesses and accused persons through video conferences in all matters. Expert opinions such as witness of a 'cmoh' who has to travel in the district for deposition after obtaining leave from the hospital which can be readily done with use of screens in court rooms where the doctor can connect from his chamber. The same goes for police personnel who are often busy in law and duty or investigation of cases and cannot depose in the court which can be also conducted through video conferencing saving a lot more dates given as 'final call' to the witnesses there after issuing of summons.
- h) Amendments to Indian evidence act for recognizing e-filing, e-filing of applications, e-deposition, e-adducing of evidence needs to be amended so as to enable all courts in India to follow and law students to learn from university days.